

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 81, LOCAL 867, AFL-CIO,	:	
	:	
	:	
Charging Party,	:	Unfair Labor Practice Charge
	:	<u>No. 21-04-1266</u>
	:	
v.	:	PROBABLE CAUSE DETERMINATION
	:	
DELAWARE STATE UNIVERSITY,	:	
	:	
Respondent.	:	

Delaware State University (“DSU”) is a public employer within the meaning of 19 Del. C. §1602(l) of the Police Officers’ and Firefighters’ Employment Relations Act, 19 Del. C. Chapter 16 (POFERA).

American Federation of State, County and Municipal Employees, AFL-CIO, (“AFSCME”) Council 81 is an employee organization within the meaning of 19 Del. C. §1602(g). By and through its affiliated Local 867, it is the exclusive bargaining representative of a bargaining unit of Delaware State University Police Department Patrolmen, Corporals and Sergeants within the meaning of 19 Del. C. §1602(h). DOL Case 506.

On April 29, 2021, AFSCME filed an unfair labor practice charge with the Delaware Public Employment Relations Board (“PERB”) alleging conduct by DSU in violation of 19 Del. C. §1607(a)(1) and (a)(3), which provide:

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
 - (1) Interfere with, restrain or coerce any employee

because of the exercise of any right guaranteed under this chapter.

(3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.

The Charge alleges DSU placed the President of AFSCME Local 867 on administrative leave on November 4, 2020, based on anti-union animus and in retaliation for his protected activity on behalf of bargaining unit members. As a result of being placed on administrative leave, the Charge asserts the Local President was deprived of state of emergency pay and promotional eligibility.

On May 7, 2021, DSU filed its Answer to the Charge admitting some facts but denying knowledge of many of the facts asserted in the Charge. In new matter included in its Answer, DSU asserts the Charge fails to articulate a violation of the POFERA or otherwise state a claim under the POFERA for which relief may be granted. It requests the Charge be dismissed in its entirety.

AFSCME filed its response to DSU's New Matter on May 18, 2021, in which it denied the legal conclusions included therein.

This probable cause determination is based on review of the pleadings submitted by the parties.

DISCUSSION

Rule 5.6 of the Rules and Regulations of the Delaware Public Employment Relations Board provides:

- (a) Upon review of the Complaint, the Answer and the Response the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may

have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with the provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.

- (b) If the Executive Director determines that an unfair labor practice may have occurred, he shall where possible, issue a decision based upon the pleadings; otherwise, he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

For purposes of reviewing the pleadings to determine whether a probable cause exists to support the charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without the benefit of receiving evidence in order to resolve factual differences. *Flowers v. DART/DTC*, ULP 04-10-453, V PERB 3179, 3182 (Probable Cause Determination, 2004).

The pleadings in this matter are sufficient to establish probable cause to believe an unfair labor practice may have occurred. It will ultimately be AFSCME's burden to establish by a preponderance of the evidence that DSU violated the Police Officers' and Firefighters' Employment Relations Act, as alleged.

DETERMINATION

Considered in a light most favorable to the Charging Party, the pleadings are sufficient to establish that DSU may have violated 19 Del. C. §1607 (a)(1) and/or (a)(3), as alleged. The pleadings raise both questions of fact and law which can only be resolved following the creation of a complete evidentiary record and the consideration of argument.

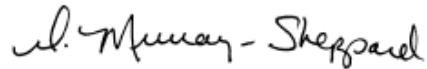
WHEREFORE, a hearing will be promptly scheduled for the purpose of developing

a full and complete factual record upon which a decision can be rendered concerning:

WHETHER DELAWARE STATE UNIVERSITY INTERFERED WITH THE
PROTECTED RIGHTS OF EMPLOYEES AND/OR ENCOURAGED OR
DISCOURAGED MEMBERSHIP IN AFSCME LOCAL 867 WHEN IT PLACED
THE LOCAL 867 PRESIDENT ON ADMINISTRATIVE LEAVE, IN VIOLATION
OF 19 DEL. C. §1607 (A)(1) AND/OR (A)(3).

Having found probable cause based on the pleadings, DSU's asserted defense that the
Charge fails to state a claim on which relief may be granted under the POFERA is denied.

DATE: July 6, 2021



DEBORAH L. MURRAY-SHEPPARD
Executive Director
Del. Public Employment Relations Bd.